HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.18020 of 2002

Between:

Smt. P. Lakshmamma

... Petitioner

And

The Government of India,
Rep. by its Deputy Secretary,
Ministry of Home Affairs, Freedom Fighters
Division, Loknayak Bhawavan, Khan Market,
New Delhi and another.

... Respondents

:: ORDER::

Counsel for Petitioner: Sri Y.S. Venkat Rao

Counsel for Respondent No.1: Shri K.G.Krishna Murthy

Counsel for Respondent No.2: Government Pleader for Revenue

December 05, 2006

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The philosophy underlying the policy framed by the Government of India in the year 1972 i.e., the year in which the nation celebrated Silver Jubilee of independence to give pension to the freedom fighters as also Swatantrata Sainik Samman Pension Scheme, 1980 (for short, 'the 1980 Scheme') was meant to express nation's gratitude to those who made sacrifices for the freedom of the country. The 1980 Scheme is intended to provide sucker and sustenance to those who had taken part in the freedom struggle by giving them pension and other monetary benefits. This sentiment of mine is reflected in the judgment of the Supreme Court in **Mukundlal Bhandari v. Union of India**[1] in which the Supreme Court observed as under:

> "The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle."

I still continue to subscribe to the same view and firmly believe that the nation and its citizenry must take care of the freedom fighters and their families, but while dealing with the writ petitions filed by large number of persons claiming themselves to be freedom fighters who had fought against the rule of Nizam or taken part in what is described as Hyderabad Liberation

Movement and their dependants, I am tempted to re-think and re-shape my perception about the sacrifices allegedly made at least by some people who filed applications for grant of pension by being treated as freedom fighters, but could not produce any evidence (primary or secondary) to substantiate their claim. The present case also falls in that category. The petitioners have produced copies of the affidavits given by the recognized freedom fighters which contain incorrect particulars and statements (I have deliberately refrained from using the word false particulars in order to avoid any embarrassment to the person who gave the affidavit). One can only express dismay and disgust that some people have tried to concoct the story of having taken part in the freedom movement or Hyderabad Liberation Movement only for the purpose of some monetary gains. It is difficult, if not impossible, to fathom the reasons which may have prompted such persons to seek intervention of the Court knowing fully well that the documents produced by them along with the application made for grant of pension under the 1980 Scheme do not satisfy the criteria laid down by the government. Such persons must be under the impression that they will be able to invoke the sympathy of the Court and get relief de hors the factual matrix of their case.

The petitioner and her husband late P. Sambaiah Goud are said to have taken part in Hyderabad Liberation Movement in 1947-48. They applied for grant of pension under the 1980 Scheme after the Government of India treated Hyderabad Liberation Movement as one of the identified freedom

movements. They succeeded in persuading the Mandal Revenue Officer and the District Magistrate to recommend their cases for grant of pension, but could not persuade the sanctioning authority i.e., the Government of India to accept their claim. Faced with this, the petitioner filed Writ Petition No.6455 of 2001 for issue of a mandamus to the respondents to sanction pension to her in lieu of her own as well as her husband's participation in Hyderabad Liberation Movement. The learned Single Judge disposed of the writ petition by directing the Government of India to consider the representation dated 20-4-1981 made by the petitioner and subsequent reminder sent by her and pass appropriate order within a period of three months.

In compliance of the directive given by the Court, the Government of India, after a thorough scrutiny of the entire material placed before it, decided not to entertain her claim to be treated as a freedom fighter. This was conveyed to the petitioner vide letter dated 14-4-2002. For the sake of convenience, extracts of paragraphs 4 to 8 of that letter are reproduced below:

> "4. As far as the eligibility conditions are concerned, the scheme, inter-alia, provides that a person who had suffered **underground** in connection with the freedom struggle for at least **six months** may be eligible for samman pension on furnishing of the specified evidences **provided** such sufferings were on account of any of the following reasons-
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> **He/she was a proclaimed offender; or one on whom an award for arrest was announced; or one for whose detention, order was issued but not served.**
>
> Voluntary underground suffering or self-exile for party work

under the command of the party leaders are not covered as eligible sufferings for pension under the Scheme. The claim of underground suffering can be considered subject to furnishing of the following evidences –

i) Documentary evidence by way of Court's / Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention.

ii) Where records of the relevant period are not available, a non-availability of records certificate **(NARC)** from the concerned State/Union territory Administration along with a personal knowledge certificate **(PKC)** from a prominent freedom fighter who has **proven jail suffering of a minimum two years and who happened to be from the same administrative unit,** could be considered as secondary evidence. The NARC should not be general or vague and should conform to the instructions issued by the Govt. of India, Ministry of Home Affairs, vide Circular No.8/12/95-FF(P) dated 7.6.96 which was reiterated on 2.11.98. The instruction, inter alia, requires the State Governments to issue NARC only after due verification from all the sources. The NARC can be treated valid only when it is furnished in the following manner,

"All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available."

5. From the verification report received from the State Government on 19.6.2000, it is observed that your late husband had claimed underground sufferings due to participation in Hyderabad Liberation Movement during 1947-48. You have also claimed underground suffering due to participation in Hyderabad Liberation Movement. In

support of the claim, only Personal Knowledge Certificates from some persons have been submitted. Except these Personal Knowledge Certificates, no documentary evidence based on official records have been submitted.

6. Government of Andhra Pradesh in their report dated 8.6.2000, had recommended the case on the basis of the Personal Knowledge Certificate issued by Shri Ambadas Rao, Ex-MLA and stated that you and your husband are eligible for pension. As per the provisions of the Scheme, the Personal Knowledge Certificate could be considered only when the same is supported by Non-Availability of Records Certificate (NARC) from all the concerned authorities of the State Government, duly verified. However, no such NARC in the prescribed proforma has been furnished. In the absence of the NARC, the Personal Knowledge Certificates cannot be considered. The State Government's recommendation is based on the Personal Knowledge Certificate of Shri S. Ambadas, Ex-MLA which is not acceptable as it is simply a photocopy and further the certifier has certified that you were underground/ externed/interned at the same time which is impossible to accept. The Personal Knowledge Certificate is not supported by NARC which is must for consideration of cases based on secondary evidence. Further, under the provisions of the Scheme a person who remained underground for more than six months or more is eligible for grant of pension provided she/he was declared as under:-

A. a proclaimed offender;

B. one on whom an award for arrest/head was announced; or

C. one for whose detention, order was issued but not served.

7. Since no information/evidence based on the official records has/have been furnished by you/your late

husband, the claimed underground suffering appears to be voluntary in nature which is not qualified for grant of pension.

8. In view of the position stated above, it is regretted that it is not possible to accede to your request for grant of pension under the Central Revenues. However, in case, you furnish the Non-Availability of Records Certificate along with Personal Knowledge Certificate from eligible certifier duly verified and recommended by State Government, both the cases will be reconsidered for grant of pension."

Sri Y.S. Venkat Rao, learned counsel for the petitioner assailed the rejection of her client's claim to be treated as a freedom fighter and consequential non-payment of pension under the 1980 Scheme by arguing that his client cannot be burdened with the responsibility of producing Non-Availability of Record Certificate (NARC). Learned counsel submitted that the exercise for securing Non-Availability of Record Certificate has to be undertaken by different departments of the government and, at this age (77 years), the petitioner is not expected to make rounds of the various offices and the departments of the government to secure the said certificate. Learned counsel conceded that the period during which the petitioner and her husband are said to have remained underground has not been correctly reflected in the Personal Knowledge Certificate (PKC) issued by Shri S. Ambadas Rao, who is a recognized freedom fighter and a Tamrapatra awardee, inasmuch as the petitioner and her husband had actually remained underground from 28-8-1947 to 16-4-1948; whereas the time period specified in the Personal Knowledge

Certificate is 1-3-1947 to
28-9-1947, but tried to explain the same by submitting that this was nothing more than a slip of pen. He submitted that Shri Ambadas Rao had conveyed this mistake to the government in the year 2000 itself and, therefore, no value should be attached to the error which has crept in the affidavit.

Shri K.G. Krishna Murthy, learned Additional Central Government counsel supported the decision contained in communication dated 14-4-2002 and argued that the petitioner and her husband cannot be treated as freedom fighters because they failed to produce primary and/or secondary evidence to show that they fall within the parameters specified in para 2.3 of the policy framed by the Government of India for grant of pension under the 1980 Scheme. Shri Krishna Murthy pointed out that the petitioner did not produce any document to show that she and her husband had remained underground for the particular period on account of their being declared as proclaimed offenders or against whom orders of detention had been issued by the competent authority or in respect of whom award for arrest was announced by the competent authority. Learned counsel emphasized that the duty to produce Non-Availability of Record Certificate is on the person who claims pension under the 1980 Scheme and unless such a certificate is produced, the Personal Knowledge Certificate given by a freedom fighter cannot be made basis for entertaining his/her claim.

I have considered the respective submissions and minutely examined the record. The explanation given by the

learned counsel for the petitioner regarding the apparent discrepancy in the Personal Knowledge Certificate of Shri Ambadas Rao and the period during which the petitioner and her husband are said to have actually remained underground, though sounds innocent, does not merit acceptance. It is neither the pleaded case of the petitioner nor it has been argued by the learned counsel that Shri Ambadas Rao is an illiterate person or that he did not know that he was giving an affidavit which would be used by the petitioner for substantiating her claim for pension under the 1980 Scheme. The immense value attached to the Personal Knowledge Certificate issued by the freedom fighter can be measured from the fact that such certificate, if accompanied by Non-Availability of Record Certificate issued by the State Government or the Union territory, can be made basis for accepting the claim for grant of pension under the 1980 Scheme notwithstanding the fact that no other evidence is produced by the claimant. Therefore, the Personal Knowledge Certificate issued by Shri Ambadas in the form of his affidavit cannot be relied for entertaining the petitioner's claim for being treated as freedom fighter.

I also agree with the learned Central Government counsel that the burden to produce the Non-Availability of Record Certificate is on the person seeking pension under the 1980 Scheme. The plain language of para 2.3 of the Scheme makes it clear that Non-Availability of Record Certificate is to be produced by the applicant. There is nothing in the language of that paragraph from which it can be inferred that the State and its

functionaries are under an obligation to secure the required certificate.

In view of the above discussion, I hold that the reasons assigned by the Central Government for declining to entertain the petitioner's claim for being treated as a freedom fighter along with her husband do not suffer from any legal infirmity warranting interference under Article 226 of the Constitution of India and the writ petition is liable to be dismissed. Ordered accordingly.

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

December 05, 2006

svs

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[1] AIR 1993 SC 2127